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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2010-181

12 **SUSAN JANE CHERPAK**
13 **1908 California Street**
14 **Huntington Beach, CA 92648**

A C C U S A T I O N

15 **Registered Nurse License No. 525808**

16 Respondent.

17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs.

22 2. On or about August 27, 1996, the Board of Registered Nursing issued Registered
23 Nurse License Number 525808 to Susan Jane Cherpak (Respondent). The Registered Nurse
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on December 31, 2009, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code states:

The lapsing or suspension of a license by operation of law or by order or decision of the board or a court of law, or the voluntary surrender of a license by a licensee shall not deprive the board of jurisdiction to proceed with any investigation of or action or disciplinary proceeding against such license, or to render a decision suspending or revoking such license.

STATUTORY PROVISIONS

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with Section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct, notwithstanding that evidence of that misconduct may be recorded in a record pertaining to an arrest. This section shall not be construed to apply to any drug diversion program operated by any agency established under Division 2 (commencing with Section 500) of this code, or any initiative act referred to in that division.

8. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board

1 may inquire into the circumstances surrounding the commission of the crime in order
2 to fix the degree of discipline or to determine if the conviction is substantially related
3 to the qualifications, functions, and duties of the licensee in question. As used in
4 this section, "license" includes "certificate," "permit," "authority," and "registration."

5
6 9. Section 2761 of the Code states:

7
8 The board may take disciplinary action against a certified or licensed nurse or
9 deny an application for a certificate or license for any of the following:

10 (a) Unprofessional conduct, which includes, but is not limited to,
11 the following:

12 ...

13 (f) Conviction of a felony or of any offense substantially related to the
14 qualifications, functions, and duties of a registered nurse, in which event the record
15 of the conviction shall be conclusive evidence thereof.

16

17 10. Section 2762 of the Code states:

18 In addition to other acts constituting unprofessional conduct within the
19 meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a
20 person licensed under this chapter to do any of the following:

21

22 (b) Use any controlled substance as defined in Division 10 (commencing with
23 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous
24 device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner
25 dangerous or injurious to himself or herself, any other person, or the public or to the
26 extent that such use impairs his or her ability to conduct with safety to the public the
27 practice authorized by his or her license.

28 ...

29 REGULATORY PROVISIONS

30 11. California Code of Regulations section 1444 states:

31 A conviction or act shall be considered to be substantially related to the
32 qualifications, functions or duties of a registered nurse if to a substantial degree it
33 evidences the present or potential unfitness of a registered nurse to practice in a manner
34 consistent with the public health, safety, or welfare. Such convictions or acts shall include
35 but not be limited to the following:

36 (a) Assaultive or abusive conduct including, but not limited to, those violations
37 listed in subdivision (d) of Penal Code Section 11160.

38 (b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section 290 of the Penal Code.

12. California Code of Regulations section 1445 states:

(b) When considering the suspension or revocation of a license on the grounds that a registered nurse has been convicted of a crime, the board, in evaluating the rehabilitation of such person and his/her eligibility for a license will consider the following criteria:

(1) Nature and severity of the act(s) or offense(s).

(2) Total criminal record.

(3) The time that has elapsed since commission of the act(s) or offense(s).

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee.

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the licensee.

COST RECOVERY

13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE (February 27, 2008 Criminal Conviction for Driving Under the Influence of Alcohol on October 23, 2006)

14. Respondent is subject to disciplinary action under sections 490 and 2761(b) of the Code in that she was convicted of a crime that is substantially related to the qualifications, functions, and duties of a registered nurse. The circumstances are as follows:

a. On October 23, 2006, respondent was involved in a minor traffic accident in a Target parking lot. The police were called. When they contacted respondent they could smell the odor of alcohol on her breath. Field sobriety tests were administered, which respondent failed. Respondent was arrested. Her blood alcohol level was .19%.

b. On November 22, 2006, in the Orange County Superior Court, Case No. 07WM00717, *People of the State of California v. Susan Jane Cherpak*, respondent was charged

1 with violating Vehicle Code sections 23152(a), driving under the influence of alcohol, and
2 23152(b) driving with a blood alcohol level above .08%.

3 c. On February 27, 2008, in the Orange County Superior Court, respondent
4 pleaded guilty to violating both charges in the criminal complaint. She was sentenced to three
5 years of informal probation, to serve two days in the Orange County Jail, to complete an alcohol
6 treatment program of at least six months duration, to pay fines, to submit to a chemical test on
7 demand of any officer, and to pay restitution to the victim of the accident.

8 **SECOND CAUSE FOR DISCIPLINE**

9 (Use of Controlled Substances in Manner Dangerous to Self or Others)

10 15. Respondent is subject to disciplinary action under section 2762(b) of the Code in that
11 she used alcohol in a manner injurious to herself or others, as set forth above in paragraphs 15(a)
12 through 15(c).

13 **DISCIPLINARY CONSIDERATIONS**

14 16. On November 17, 1999, Accusation No. 2000-85 was filed against respondent
15 alleging violations of Business and Professions Code sections 490 and 2761(f). The accusation
16 was based upon respondent's 1977 conviction for violating Penal Code sections 484(a)/488, petty
17 theft, a crime substantially related to the qualifications, functions and duties of a registered nurse.
18 Respondent was placed on two years probation and required to undergo a mental health
19 examination, and complete a nursing course along with the Board's standard terms and conditions
20 of probation.

21 **PRAYER**

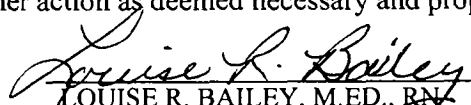
22 WHEREFORE, Complainant requests that a hearing be held on the matters herein
23 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 24 1. Revoking or suspending Registered Nurse License Number 525808, issued to
25 Susan Jane Cherpak.
- 26 2. Ordering Susan Jane Cherpak to pay the Board of Registered Nursing the
27 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
28 Professions Code section 125.3;

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3. Taking such other and further action as deemed necessary and proper.

DATED: 9/28/09


LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SD2009702782
accusation.rtf

1 BILL LOCKYER, Attorney General
of the State of California
2 SUSAN A. RUFF, State Bar No. 115869
Deputy Attorney General
3 Department of Justice
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4 San Diego, California 92101
Telephone: (619) 645-2077
5
6 Attorneys for Complainant

7
8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation) NO. 2000-85
13 Against:)
14 SUSAN CHERPAK) OAH No. L-2000020159
5612 Riviera Drive)
15 Huntington Beach, CA 92647)
License No. 525808) STIPULATION IN
Respondent.) SETTLEMENT AND DECISION

16
17 Complainant, Ruth Ann Terry, R.N., M.P.H., Executive
18 Officer of the Board of Registered Nursing of the State of
19 California, by and through her attorney, Bill Lockyer, Attorney
20 General of the State of California, by Susan A. Ruff, Deputy
21 Attorney General, and Susan Cherpak ("respondent"), by and
22 through her attorneys Wallin & Klarich, by Renee Garcia Esq.,
23 hereby stipulate as follows:

24 1. The Board of Registered Nursing, Department of
25 Consumer Affairs ("Board") acquired jurisdiction over respondent
26 by reason of the following:

27 A. Respondent was duly served with a copy of the
28 Accusation, Statement to Respondent, Request for Discovery, Form

1 Notice of Defense and copies of Government Code sections 11507.5,
2 11507.6 and 11507.7 as required by sections 11503 and 11505, and
3 respondent timely filed a Notice of Defense within the time
4 allowed by section 11506 of the code.

5 B. Respondent has received and read the
6 Accusation which is presently on file as Case No. 2000-85, before
7 the Board. Respondent understands the nature of the charges
8 alleged in the Accusation and that the charges and allegations
9 constitute cause for imposing discipline upon respondent's
10 license to practice nursing which was issued by the Board.

11 2. Respondent and her counsel are aware of each of
12 respondent's rights, including the right to a hearing on the
13 charges and allegations, the right to confront and cross-examine
14 witnesses who would testify against respondent, the right to
15 present evidence in her favor and call witnesses on her behalf,
16 or to testify, her right to contest the charges and allegations,
17 and other rights which are accorded to respondent pursuant to the
18 California Administrative Procedure Act (Gov. Code, § 11500 et
19 seq.), including the right to seek reconsideration, review by the
20 superior court, and appellate review.

21 3. Respondent freely and voluntarily waives each and
22 every one of the rights set forth in paragraph 2.

23 4. Respondent understands that in signing this
24 Stipulation rather than contesting the Accusation, she is
25 enabling the Board to issue the following order without further
26 process.

27 5. The parties agree that the Stipulation recited
28 herein shall be null and void and not binding upon the parties

1 unless approved by the Board, except for this paragraph, which
2 shall remain in effect. The respondent understands and agrees
3 that in deciding whether or not to adopt this Stipulation the
4 Board may receive oral and written communications from its staff
5 and the Attorney General's office. Communications pursuant to
6 this paragraph shall not disqualify the Board or other persons
7 from future participation in this or any other matter affecting
8 respondent. In the event the Board in its discretion does not
9 approve this settlement, this Stipulation, with the exception of
10 this paragraph, is withdrawn and shall be of no evidentiary value
11 and shall not be relied upon or introduced in any disciplinary
12 action by either party hereto. Respondent agrees that should the
13 Board reject this Stipulation and if this case proceeds to
14 hearing, respondent will assert no claim that the Board was
15 prejudiced by its review and discussion of this Stipulation or of
16 any records related hereto.

17 6. Respondent admits that each and every allegation of
18 Accusation number 2000-85 is true and that cause exists thereby
19 to discipline her license. A copy of Accusation number 2000-85
20 is attached to this Stipulation as Exhibit A.

21 7. The parties agree that facsimile copies of this
22 Stipulation, including facsimile signatures of the parties, may
23 be used in lieu of original documents and signatures. The
24 facsimile copies will have the same force and effect as
25 originals.

26 8. Based upon the foregoing, it is stipulated and
27 agreed that the Board may issue the following as its decision in
28 this case.

ORDER

IT IS HEREBY ORDERED that License number 525808 issued to Susan Cherpak is revoked. However, the revocation is stayed and respondent is placed on probation for 2 years on the following terms and conditions:

1. **MENTAL HEALTH EXAMINATION**

The respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the respondent.

If the licensed mental health practitioner determines that respondent is capable of practicing nursing with safety to the public, the Board or its designee, in its discretion, may terminate probation and dismiss the Accusation.

2. **OBEY ALL LAWS**

Respondent shall obey all federal, state and local laws, and all rules and regulations of the Board of Registered Nursing governing the practice of nursing in California. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within

1 seventy-two (72) hours of occurrence. To permit monitoring of
2 compliance with this term, respondent shall submit completed
3 fingerprint cards and fingerprint fees within 45 days of the
4 effective date of the decision, unless previously submitted as
5 part of the licensure application process.

6 **3. COMPLY WITH PROBATION PROGRAM**

7 Respondent shall fully comply with the terms and
8 conditions of the Probation Program established by the Board and
9 cooperate with representatives of the Board in its monitoring and
10 investigation of the respondent's compliance with the Program.
11 Respondent shall inform the Board in writing within no more than
12 15 days of any address change and shall at all times maintain an
13 active, current license status with the Board, including during
14 any period of suspension.

15 **4. REPORT IN PERSON**

16 Respondent, during the period of probation, shall
17 appear in person at interviews/meetings as directed by the Board
18 or its designated representatives.

19 **5. ABSENCE FROM STATE**

20 Periods of residency or practice outside of California
21 will not apply to the reduction of this probationary term. The
22 respondent must provide written notice to the Board within 15
23 days of any change of residency or practice outside the state.

24 Respondent shall be bound by the terms and conditions
25 of the Disciplinary Order at its effective date. However, the
26 period of probation shall be tolled and the terms and conditions
27 of the Disciplinary Order shall be stayed while respondent is
28 residing and practicing out of state, until respondent enters the

1 State of California to practice nursing at a future date.
2 Respondent shall give written notice to the Board of her
3 intention to practice nursing in California thirty (30) days
4 prior to engaging in any activity requiring a registered nurse
5 license issued by the Board. Failure to comply with the notice
6 requirements shall constitute a violation of probation and a
7 basis for revoking probation and respondent's California
8 registered nurse license.

9 6. **SUBMIT WRITTEN REPORTS**

10 Respondent, during the period of probation, shall
11 submit such written reports/declarations and verification of
12 actions under penalty of perjury as are required. These
13 declarations shall contain statements relative to respondent's
14 compliance with all the terms and conditions of the Board's
15 Probation Program. Respondent shall immediately execute all
16 release of information forms as may be required by the Board or
17 its representatives.

18 7. **FUNCTION AS A REGISTERED NURSE**

19 Respondent, during the period of probation, shall
20 engage in the practice of professional nursing in California for
21 a minimum of 24 hours per week (or as determined by the Board)
22 for 6 consecutive months. Per Section 2732 of the Business and
23 Professions Code, no person shall engage in the practice of
24 registered nursing without holding a license which is in an
25 active status.

26 8. **NURSING PRACTICE**

27 The Board shall be informed of and approve of each
28 agency for which respondent provides nursing services prior to

1 respondent's commencement of work. Depending on the outcome of
2 the mental health examination required in paragraph 1 above, the
3 Board or its designee, in its discretion, may require respondent
4 to inform her employer of the reason for and the terms and
5 conditions of probation and to provide a copy of the Board's
6 decision and order to her employer and immediate supervisor. The
7 employer shall submit performance evaluations and other reports
8 as requested by the Board.

9 Respondent is required to notify the Board in writing
10 within seventy-two (72) hours after termination of any nursing
11 employment. Any notification of termination shall contain a full
12 explanation of the circumstances surrounding it.

13 **9. SUPERVISION**

14 The Board shall be informed of and approve of the level
15 of supervision provided to the respondent while she is
16 functioning as a registered nurse. The appropriate level of
17 supervision must be approved by the Board prior to commencement
18 of work. Respondent shall practice only under the direct
19 supervision of a registered nurse in good standing (no current
20 discipline) with the Board of Registered Nursing.

21 **10. EMPLOYMENT LIMITATIONS**

22 Respondent may not work for a nurse registry; temporary
23 nurse agency; home care agency; in-house nursing pool; as a
24 nursing supervisor; as a faculty member in an approved school of
25 nursing; or as an instructor in a Board approved continuing
26 education program. Respondent must work only on regularly
27 assigned, identified and predetermined worksite(s) with
28 appropriate supervision as approved by the Board.

11. COMPLETE A NURSING COURSE(S)

Respondent, at her expense, shall begin and successfully complete a course(s) in nursing as directed by the Board prior to the end of the probationary term.

The content of such course(s) and the place and conditions of instruction shall be specified by Board representatives at the time of the initial probation meeting based on the nature of the violation(s). Specific courses must be approved prior to enrollment. The respondent must submit written proof of enrollment and proof of successful completion. Transcripts or certificates of completion must be mailed directly to the Board by the agency or entity instructing the respondent. Home study or correspondence courses are not acceptable and will not be approved.

12. VIOLATION OF PROBATION

If respondent violates the conditions of her probation, the Board after giving respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation) of the respondent's license.

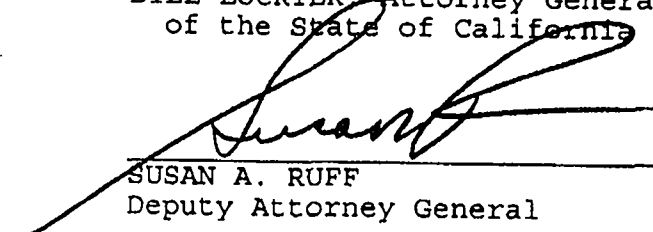
If during the period of probation, an accusation or petition to revoke probation has been filed against respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board. Upon successful completion of probation, the respondent's license will be fully restored.

///

1 We concur in the Stipulation and Order.

2 DATED: 4/13/00

3 BILL LOCKYER Attorney General
4 of the State of California

5 
6 SUSAN A. RUFF
7 Deputy Attorney General

8 Attorneys for Complainant

9 DATED: 3-27-00

10 WALLIN & KLARICH

11 
12 RENEE GARCIA, Esq.

13 Attorneys for Respondent

14 I have carefully read and fully understand the
15 Stipulation and Order set forth above. I have discussed the
16 terms and conditions set forth in the Stipulation and Order with
17 my attorney Renee Garcia, Esq. I understand that in signing this
18 Stipulation I am waiving my right to a hearing on the charges set
19 forth in the Accusation on file in this matter. I further
20 understand in signing this Stipulation that the Board may enter
21 the foregoing order placing certain requirements, restrictions
22 and limitations on my right to practice nursing in the State of
23 California. I agree that a facsimile copy of this Stipulation,
24 including a facsimile copy of my signature may be used with the
25 same force and effect as the originals.

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27 Dated: 3-27-00

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SUSAN CHERPAK
Respondent

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DECISION AND ORDER
OF THE BOARD OF REGISTERED NURSING

The foregoing Stipulation and Order, in Accusation Case
No. 2000-85, is hereby adopted as the Order of the California
Board of Registered Nursing. An effective date of July 13, 2000.
2000, has been assigned to this Decision and Order.

Made this 13th day of June, 2000.


FOR THE BOARD OF REGISTERED NURSING

SAR:sr
03579110-SD1998AD0874

1 BILL LOCKYER, Attorney General
of the State of California
2 SUSAN A. RUFF, State Bar No. 115869
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4 Telephone: (619) 645-2077

5 Attorneys for Complainant
6
7

8 BEFORE THE
BOARD OF REGISTERED NURSING
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation) NO. 2000-85
12 Against:)
13 SUSAN JANE CHERPAK) ACCUSATION
5612 Riviera Drive)
14 Huntington Beach, CA 926472021)
License No. 525808)
15 Respondent.)
16

17 Ruth Ann Terry, R.N., M.P.H., for causes for discipline
18 alleges:

19 1. Complainant Ruth Ann Terry, R.N., M.P.H., makes and
20 files this accusation in her official capacity as Executive
21 Officer, Board of Registered Nursing, Department of Consumer
22 Affairs, State of California.

23 LICENSE INFORMATION

24 2. On August 27, 1996, the Board of Registered Nursing
25 issued registered nurse license number 525808, to Susan Jane
26 Cherpak (hereinafter referred to as respondent). On
27 December 31, 1999, the license will expire, if not renewed.

Exhibit "A"
1.

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1 California, for taking merchandise valued at approximately
2 \$287.00.

3 8. Respondent has subjected her license to discipline
4 under Business and Professions Code section 2761(a) on the
5 grounds of unprofessional conduct in that on or about April 16,
6 1997, she committed an act of petty theft as set forth in
7 paragraphs 6 and 7.

8 PRAYER

9 WHEREFORE, complainant prays that a hearing be held and
10 that the Board of Registered Nursing make an order:

11 1. Revoking or suspending registered nurse license
12 number 525808, issued to Susan Jane Cherpak.

13 2. Ordering respondent to pay to the Board its costs
14 in the investigation and enforcement of the case according to
15 proof at the hearing pursuant to Business and Professions Code
16 section 125.3.

17 3. Taking such other and further action as may be
18 deemed proper and appropriate.

19 DATED: 11/17/99

20
21
22 R. Ann Terry
23 RUTH ANN TERRY, R.N., M.P.H.
24 Executive Officer
25 Board of Registered Nursing
26 Department of Consumer Affairs
27 State of California

Complainant

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